

STATE OF MICHIGAN
SUPREME COURT

ALESIA HARRIS, widow and personal
representative of HENRY HARRIS (DEC'D),

Plaintiff-Appellant,

SC: 14021
COA: 285426
WCAC: 06-000256

vs.

GENERAL MOTORS CORPORATION,

Defendant-Appellee

/
PASKEL, TASHMAN, & WALKER, PC
BY: MICHAEL J. CANTOR(P25980)
Attorneys for Plaintiff-Appellant
24445 Northwestern Hwy. #102
Southfield, MI 48075
(248) 353-7750

BRAUN KENDRICK FINKBEINER P.L.C.
BY: E. L. Ognisanti (P 23130)
Attorneys for Defendant-Appellee
4301 Fashion Square Blvd.
Saginaw, MI 48603
(989) 498-2100

APPELLANT'S SUPPLEMENTAL BRIEF
ON RECONSIDERATION

FILED

DEC 01 2010

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

140241
3 PLATS Supd

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SUPPLEMENTAL ARGUMENT

This matter is before the Court to resolve a conflict in Workers' Compensation case law regarding falls in the workplace from unexplained causes. The facts of this case and the existence of error by the magistrate are actually secondary to the resolution of this issue, since we are proceeding on the determination of whether the Workers' Compensation "level floor doctrine" is being improperly expanded to include non-idiopathic or personal risk falls.

In *Woodburn v Oliver Machinery Co*, 257 Mich 109; 241 N.W. 159, (1932), this Court unanimously held that the fact that the worker's death was from injuries in a workplace fall, was sufficient to raise the presumption the injuries arose out of and in the course of employment even though the cause of the fall was unexplained. In *McClain v Chrysler Corp*, 138 Mich App 723; 360 N.W. 2d. 284 (1984), the Court of Appeals held without citation, that injuries without known causal relationship to employment were non-compensable.

The "level floor doctrine" is simply this: If a worker suffers injuries *caused by a fall from a personal disease or infirmity* and strikes a level floor, the injuries including death are not compensable. *Ledbetter v Michigan Carton Co*, 74 Mich App 330; 253 N.W. 2d. 753 (1977), citing Larson's Workers' Compensation Law, 9.01. The rationale is clear—if the cause of the fall is internal to the worker (idiopathic), then the fact that he fell at work is mere coincidence and if the fall causing injuries is to level ground, the injuries would have been caused regardless of where the fall occurred, so that the workplace is not a part of the equation.

Conversely, if the fall is not to level ground, but to a surface or a place that accentuates the risk, the workplace is in the equation and if the injuries are suffered due to the landing place of the fall and not to the condition, it is compensable, *Hill v Faircloth Mfg. Co*, 245 Mich App 710; 630 NW2d 640 (2001).

However, if the cause of the fall is itself unknown, the fact that the employment brought the worker to the place of the fall, as Larson put it, is “an extremely lightweight causal factor, but is enough to tip the scales...” *Ledbetter v Michigan Carton Co.*, 74 Mich App 330 (1977) and *Ruthruff v Tower Holding Corp, on reconsideration*, 261 Mich App 613; 684 N. W. 2d. 888, 892 (2004). *Larson* 3-221 (note *Ruthruff* erroneously says “casual” instead of “causal”)

In essence there are three possible scenarios—and to oversimplify a bit—they are as follows:

1. A worker has a disease or infirmity and falls at work suffering fatal injuries. The workplace surface on which the worker fell was level ground. This is non-compensable since the workplace was incidental not an aggravating factor.
2. A worker has a disease or infirmity and falls at work suffering fatal injuries. The workplace was not level, but included non-level objects which make the potential for injury greater. This is compensable since the workplace took what may have been only a minor incident and made it worse thereby becoming an aggravating factor.
3. A worker has no known disease or infirmity that would cause a fall. The worker slipped or tripped and fell suffering injuries on an otherwise level floor, but

nothing indicates with any certainty what caused the slip or trip. This is compensable because the risk was neutral and his trip or slip was in the specific spot of the workplace. To trip or slip, one must trip or slip **on** something, even if that something is the floor alone. That something is in the workplace, and the motion involved is in the course of employment. We know this since “an employee going to or from his, or her work, while on the premises where the employee’s work is to be performed...is presumed to be in the course of his or her employment.” MCL 418.301(3).

What the magistrate did was to change the operative facts and thereby eliminate the possibility of a slip or trip and fall. (He also falsely reported the testimony of the County Medical Examiner and used that to deny the witness’ credibility.) The Appellate Commission enacted, and the Court of Appeals affirmed, in ruling the magistrate’s error harmless because Mr. Harris may have “tripped on his own feet,” was both expansion of the level floor doctrine to non-idiopathic falls, and introduction of the potential of the worker’s own negligence into the equation. Additionally, by requiring a worker to slip or trip on a foreign substance, the WCAC and court below have introduced the requirement of the worker to prove the negligence of the employer in the workplace. Both elements are barred from consideration: the employee’s by MCL 418.141; the employer’s by the very nature of workers’ compensation law making injuries that arise out of and in the course of employment compensable. The fact that the worker in the third scenario—i.e. this case, may have slipped or tripped on *a* level floor does not change this since what he slipped or tripped *on* was *that* workplace floor.

To further illustrate the misapplication of the law by the WCAC, let us assume that this was not a fatal fall and that indeed Mr. Harris had only tripped on his own feet while rushing to the workplace bathroom and suffered no more than a broken arm. How can one seriously argue that this is non compensable. He is on the job going to facilities the employer must have—both legally and for economic reasons, as it would be highly wasteful if a worker had to go off premises to relieve oneself. His potential negligence in possibly waiting too long is not a defense. His failure to use due caution is not a defense. If he were a “klutz” and just prone to trip and fall, that is not a defense since every employer everywhere would be allowed to say it is the employee’s fault for any accident, such as clumsily handling tools or equipment. The basic premises of the law of Workers’ Disability Compensation do not change just because of the extreme seriousness of this situation.

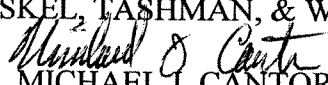
Here, the Plaintiff presented to the Board of Magistrates that Mr. Harris’ fall came while he was in motion—he slipped or tripped (albeit on things or substances unknown) while in the workplace. All three medical experts agreed that this was most likely. The Saginaw County Medical Examiner testified that the most likely cause was a fall involving motion of a slip or trip type. The Defendant’s expert agreed that this was a “smidgen” more likely to be the cause as opposed to a stationary action such as passing out. The attending surgeon testified that a motion fall had the potential to cause greater injury than a stationary fall.

Defendant’s theory, while not agreeing with plaintiff’s, was that the fall was idiopathic. It’s expert stated that this was a possible cause, but not the most likely. The Medical Examiner and the attending surgeon also could not definitively rule this out.

Plaintiff had the burden of showing a reasonable relation of cause and effect between the fall and the workplace, *Kepsel v McReady & Sons*, 345 Mich 335; 76 N. W. 2d. 30 (1956). The magistrate found that Justo Gonzalez, the only witness present when the incident occurred, testified that Mr. Harris was stationary when he fell, thereby ruling Plaintiff's theory could not have occurred. The witness gave no such testimony, thereby making the magistrate's findings excluding Plaintiff's theory a set of findings based not upon the record. The WCAC majority acknowledged the errors but ruled them harmless stating that Plaintiff's theory was defective because Plaintiff may have tripped on his own feet and that if so, it was non-compensable. As we believe has been shown, this is not in accord with the law. If he did trip on his own feet it is still compensable because he was on the premises and therefore this arises out of and in the course of employment. The Court of Appeals here compounded the error by placing this (potential) situation within the "level floor doctrine" when it clearly is not such a case.

RELIEF REQUESTED

We therefore request that the Court grant leave and summarily reverse the Court of Appeals and remand the case back to the Appellate Commission or the Board of Magistrates for findings that are based upon the actual record of the case and the actual law regarding workplace falls from unexplained causes.

Respectfully submitted,
PASKEL, TASHMAN, & WALKER, PC

By: MICHAEL J. CANTOR (25980)
24445 Northwestern, Suite 102
Southfield, MI 48075
(248) 353-7750
FAX (248) 353-2253

December 1, 2010